



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board
Ben Ysursa, Secretary of State
Lawrence G. Wasden, Attorney General
Keith L. Johnson, State Controller
Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

Final Minutes Regular Land Board Meeting January 14, 2003

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, January 14, 2003 in Boise, Idaho. The meeting began at 9:07 a.m. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Ben Ysursa
Honorable Attorney General Lawrence G. Wasden
Honorable State Controller Keith L. Johnson
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

Governor Kempthorne opened the meeting by welcoming newly-elected members Attorney General Lawrence Wasden, Secretary of State Ben Ysursa and Controller Keith Johnson.

• CONSENT AGENDA

Director Wiggins welcomed the new Board members and provided background information on the Consent Agenda items.

A motion was made by Attorney General Wasden to approve the Consent Agenda in its entirety. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

1. Director's Report – approved

- A. Interest Rate on Department Transactions – December 2002, January 2003
- B. Bureau of Surface and Resource Management, Minerals Section, Official Transactions – December 2002
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – December 2002
- D. Bureau of Real Estate, Easement Section, Official Transactions – December 2002
- E. Bureau of Surface and Resource Management, Range Management and Surface Leasing Section, Official Transactions – December 2002
- F. Timber Sale Official Transactions – November 28, 2002 through December 20, 2002
- G. Timber Sale Activity Report

(G. Timber Sale Activity Report) **DISCUSSION:** Attorney General Wasden asked for the location of the 15,000 board feet of sawlogs taken in Southwest, Idaho. Director Wiggins responded the Department's Southwest Office has rough boundaries that include the Boise Basin country and run as far north as Smith's Ferry. The Department has timberland that runs along the hill to the east of the highway going north toward Banks and also has a block of land that lays to the east, on both sides of the highway, north of Banks up to about Smith's

Ferry. In fact, a large block of land, called the Packard John Block, comes down that ridge toward the area where the river forks.

2. Timber Sales – approved – Staffed by Bob Helmer, Chief, Bureau of Forest Management

A. N. Fork Tyson Creek CR-3-0436 4,060 MBF

DISCUSSION: Attorney General Wasden asked for a clarification of the \$313,000 to be paid to the purchaser upon completion of all developments on the North Fork Tyson Creek timber sale. Director Wiggins responded that this particular contract will put a rock surface on an access road to state timberland. The cost can run anywhere up to \$50,000 or \$60,000 per mile, depending on the location of the rock. Typically rock is brought out of a pit, crushed, hauled, put down and processed.

Governor Kempthorne noted that this timber sale has three clearcuts. He asked if the configuration of this clearcut will meander and contour to the landscape. Director Wiggins stated that the Department's clearcut lines, unless they abut property boundaries, are typically either contour or timber-type related. However, there are exceptions to the rule and Director Wiggins stated he does not know the answer on this particular sale. From a silvicultural standpoint, clearcutting is done as a last resort and is done in cases where the condition of the timber stand is such that there is no reasonable alternative to bring the site back to productivity. On a per year acreage basis, the Department clearcuts less than 10% of its harvest.

Superintendent Howard commented that the Department has reasons for clearcutting in terms of infestation and other factors. She asked what indications there were on these two sales that required clearcuts. Assistant Director Ron Litz responded that North Fork Tyson Creek has three units that are over mature timber. The understories are essentially devoid of any young regeneration of any kind. North Fork Tyson Creek also has an infestation of root rot. The Department is trying to replant larch, white pine and some other species that are more resistant. The same is true on the second sale, which is in the McCall area.

B. Upper Lakey CR-5-0109 5,975 MBF

3. Conceptual Approval for IDL/BLM Land Exchange – approved – Staffed by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: That the board conceptually approve this exchange proposal and direct the department to proceed with the cruise and appraisals.

DISCUSSION: Attorney General Wasden asked about the potential for future development along Highway 21. Assistant Director Biladeau stated the market trend shows industrial-type development moving to the southeast of Boise. Based on that market trend, it is believed the parcel will have future potential.

Attorney General Wasden asked if the smaller parcels are contiguous to other state lands so that we are creating bigger parcels or are we bifurcating our ownership. Assistant Director Biladeau stated most of the parcels identified tie into existing state parcels. Attorney General Wasden asked if some of these parcels are intended for a three-way exchange. Director Wiggins stated the Department tries to acquire lands that will increase our base asset value and improve the revenue stream to the endowments. Those are the long-term holding acquisitions and they are the key. Secondly, access is a consideration because access to land becomes more difficult with time. By acquiring one of these parcels we actually acquired access to state land that had previously been landlocked. The third one is acquisition for subsequent exchange with another

party. Through this process our goal is to then use these parcels to acquire other more desirable parcels that fit better into our asset mix.

Superintendent Howard asked if we currently have access to the property in the foothills. Director Wiggins stated there is access to almost all of the properties. Access may be via secondary roads but we can get to those parcels for management purposes. Ultimately the Department's goal is to dispose of the parcels and we are working with the BLM to do that. It is the Department's belief that the BLM does not have adequate and suitable properties to accomplish this goal so we are working to try to get the Forest Service involved for a three-way exchange. That would enable the Department to obtain property more suitable to its mission and at the same time accomplish the objectives of the foothills. This is a concept. When we get to the point of actually appraising the individual pieces of ground we may find that the values are out of balance. At that point we will make adjustments so that when we come back to the Board, we will have a recommendation for a final package that is exact in its nature. Superintendent Howard commented that it would be helpful to be able to see the surrounding terrain and to know what the parcels are connecting to or what the other department circumstances are that would be associated with the parcels.

Secretary of State Ysursa asked if we are complicating matters by bringing in the Forest Service. Director Wiggins stated it is possible that going to the Forest Service will complicate things but if the end result is that the endowments obtain properties that are suitable for long-term good revenue production then it is worth the effort.

Governor Kempthorne asked what the next step will be. Director Wiggins stated the only next conceptual approval the Board might see is if there is a fairly dramatic change in the information presented. Assuming there is not, the Department would come back to the Board with a final recommendation. The Department would also be glad to update the Board at any point. Ideally the Board will see a series of conceptual approvals as staff works its way through this to accomplish the long-term goal.

Superintendent Howard commented it is distressing to look down and see 17 acres here, 40 acres there and then we end up with 541 acres and we are exchanging more than that. She would like a little better deal. Director Wiggins suggested that the Board not get too focused on the number of acres. If you give up a thousand acres of land that you either can not manage or is low revenue production and you get 100 acres that is manageable and produces a good revenue stream, that is actually good for us. Director Wiggins stated he would be glad to sit down with the Board members to provide more specific information on these parcels.

BOARD ACTION: Approved.

4. Request for Approval for Disclaimer of Interest to Willard and Ethyl Stevens on 5.23 Acres of Accretion Land along the Boise River in Canyon County – *approved*
– Staffed by Perry Whittaker, Chief, Bureau of Real Estate

DEPARTMENT RECOMMENDATION: That the board approve the issuance of a disclaimer of interest for this parcel of accretion land totaling 5.23 acres. The recommended fee is \$600.00.

DISCUSSION: Attorney General Wasden asked if by this document we are disclaiming our interest in it but not making any statement as to the Stevens' title and interest. Director Wiggins responded all we are doing is disclaiming interest.

BOARD ACTION: Approved.

5. Minutes – approved – Regular Land Board Meeting – December 10, 2002

- **REGULAR AGENDA**

6. Endowment Fund Update – Presented by Bob Maynard, PERSI

- Robert Maynard is the Chief Investment Officer for the Public Employees Retirement System of Idaho.
- Matthew Haertzen is the Manager of Investments for the Endowment Fund Investment Board.

Mr. Maynard. The Endowment Fund started the year at \$682 million. The Fund value as of December 31, 2002 was \$631 million. The report shows three things that determine performance.

1. *Underlying Strategic Policy* – 70% U. S. equities; 30% fixed income. The underlying asset allocation generally sets the stage and drives the returns.
2. *Board Implementation of Policy* – by either the Land Board or the Endowment Fund Investment Board. This covers biases, tilts, preferences and whether rebalancing is done daily, monthly or annually. It covers actions that boards take.
3. *Individual Manager Performance* – The customized benchmark reflects the combined impact of the rebalancing discipline plus preferences. The remainder between the customized benchmark and the overall return is the impact of the third component, which is individual manager performance. When you see your ultimate return, you can see what is driving that return and whether you are doing better or worse than you expected.

Governor Kempthorne asked about replacement of underperforming managers. Mr. Maynard stated two managers have been released. The money that was handled by those investment managers was placed into the S&P 500 index fund. Mr. Haertzen and the Endowment Fund Investment Board will look into those issues.

Mr. Haertzen. Mr. Haertzen stated the managers may not be replaced specifically within the asset classes that they came from. The EFIB will meet next week to discuss the matter further. Initially Mr. Haertzen does not agree with some of the biases. He would like to be closer to the policy benchmarks. From an office perspective, his staff will be taking a very close look at all of the managers. The managers have been asked to come in to give formal presentations to the EFIB staff.

No action was taken on this agenda item.

7. Appeal of Land Board Decision to Retain Grazing Rental Deposit (Calligan) – Presented by Jay Biladeau, Assistant Director, Lands, Minerals, Range

DEPARTMENT RECOMMENDATION: That the board, in accordance with IDAPA 20.03.14.105, reject Mr. Calligan's request for a refund of his rental deposit of \$651.60 for lease G-4035 and \$282.36 for lease G-4566.

DISCUSSION: As a point of reference on this item, but also extending beyond this item to a variety of Administrative Rules that the department operates under, Director Wiggins commented that the department tries to enforce and administer rules in a consistent manner.

Attorney General Wasden asked if the Department incurred costs for this lease auction. Assistant Director Biladeau responded there were more applicants for these particular auctions so the Department's would have incurred costs anyway for setting up the auction, advertising and

conducting the auction. The extra cost identified covers additional time spent. By policy the Department allows one additional hour if someone fails to appear at an auction. The Department had several employees at these auctions and there were two extra hours spent because Mr. Calligan did not attend.

Audience with the Board

Mr. William Calligan was granted an audience with the board.

Mr. Calligan. Mr. Calligan commented that his only defense is that he got a little bit busier than he intended and forgot about the date of the auction. He works for another ranch plus he runs about 150 brood cows of his own. He had the opportunity to take a fence job and he took it. He stated this was simply an omission on his part and he attended the Land Board meeting to ask the Board to allow him to recover the auction money, which was forfeited.

Governor Kempthorne asked Mr. Calligan if he received certified letters from the Department of Lands. Mr. Calligan stated he did. Governor Kempthorne asked if it was clear that failure to appear would result in a forfeit of the moneys unless Mr. Calligan notified the Department three days prior to the auction that he would not be attending. Mr. Calligan stated he did not see that part of the letter, but he had read the letter quickly and then he placed the letter on a clip in his truck.

Superintendent Howard stated she is very sympathetic to the issue of trying to make a living on the land. She commented it is difficult to manage policies and still be considerate of people who are having financial difficulties. She asked Mr. Calligan if he was making a financial hardship plea to the Board. Mr. Calligan stated he was. He will have to make the money up somewhere. However, Mr. Calligan stated he is not trying to place the blame on anyone. He stated he made a terrible mistake and as a result of that mistake it is a hardship on his ranch.

Controller Johnson commented to Mr. Calligan that the Board appreciates his integrity in making the representation that he is not trying to place the blame on the Department of Lands or on someone else and that Mr. Calligan has accepted the responsibility for this occurrence. Controller Johnson asked Assistant Director Biladeau if the Administrative Procedures Act, or the Land Board, has ever attempted to define what extraordinary circumstance means and is there some guidance as to how the Board can characterize and define that. Assistant Director Biladeau responded that the definition for extraordinary circumstances lies within the Board in reviewing cases. It has not been defined. In this case, the Department did not feel this situation would fit an extraordinary circumstance.

Governor Kempthorne complimented Mr. Calligan on his work ethic. He understands that Mr. Calligan is trying to make ends meet and that right now commodities are suffering. He stated he is hearing a request from Mr. Calligan for the Board to look at this situation as a financial hardship. However, he is uncertain that it would be considered an extraordinary hardship. The dilemma the Board finds itself in is that if the Board is empathetic on one particular case and makes a decision based on that empathy, a precedent is set and receipt of a certified letter will mean nothing from that point on.

Director Wiggins commented that he does not wish Mr. Calligan to get the wrong impression of the Department's presentation. The Department is not suggesting that Mr. Calligan was trying to obstruct the auction process. This matter gets more to the precedent question because there are people who, in fact, would try to obstruct the process if they were given the opportunity. Any reference made was not made toward Mr. Calligan individually. This rule is designed specifically to, at least in part, try to discourage those who are not serious about leasing state land. Also, Director Wiggins commented if financial hardship is added under extraordinary circumstance, it would be very difficult for the Department to define.

Governor Kempthorne asked if the leases in question had been awarded to other parties. Director Wiggins stated that the leases were awarded to other parties because in this instance there were three applicants, including Mr. Calligan. The auctions proceeded after staff waited the prescribed hour and the leases were awarded following the auction between the two remaining parties. Governor Kempthorne asked if there might be some other state land that Mr. Calligan could lease to get him through this season. Assistant Director Biladeau responded he had not specifically looked into that option. Mr. Calligan could check with the area office for unleased land or land that might be coming up this year for renewal. Governor Kempthorne asked Mr. Calligan if that would help him out. Mr. Calligan stated it would. Governor Kempthorne restated there would be no remuneration of the forfeited money, but if it is possible for the Department to help Mr. Calligan for this one season, it would be good. Director Wiggins stated the Department would be glad to sit down with Mr. Calligan to review available lands. It would probably be a short-term permit, which means unleased lands.

Controller Johnson asked if anyone ever looked at whether the forfeiture rule is an appropriate remedy for this type of situation. Director Wiggins stated the grazing rules were rewritten and adopted about a year ago. However, this particular provision is a carryover from the previous rules. Whether or not it is an appropriate step would have to be considered. Forfeiture is not a common occurrence.

Governor Kempthorne suggested that this issue needs resolution. He suggested that the Board approve the Department's recommendation and include in the motion that the Department will work with Mr. Calligan to find a permit for one year so he can get through this season. Controller Johnson concurred.

Superintendent Howard wondered if, for the minutes, the Board wants to have all of that information in the motion or if the Board wants to have a motion to deny with a separate follow up recommendation to the Department. Secretary of State Ysursa stated the proper motion would be to approve the Department's recommendation.

Attorney General Wasden thanked Mr. Calligan for the integrity he has shown. The Board understands the difficult circumstance Mr. Calligan finds himself in. Governor Kempthorne agreed and added that in a briefing for this meeting he learned about Mr. Calligan's absolute honesty and integrity throughout this matter. Mr. Calligan could have tried something else, but he did not, and the Board appreciates that.

BOARD ACTION: A motion was made by State Controller Johnson to approve the Department's recommendation. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.

FOLLOW-UP BOARD RECOMMENDATION: Board members recommend that the Department work with Mr. Calligan in an attempt to locate any available lease property to assist Mr. Calligan through this winter season. Director Wiggins responded that the department would do its best to assist Mr. Calligan.

- **EXECUTIVE SESSION**

A. To Consider Personnel Matters [Idaho Code § 67-2345(1)(b)] - WITHDRAWN

Before concluding the meeting, Director Wiggins addressed the Board.

Director Wiggins. As I see it, our job as a Department is to give you the very best information possible so you can make an informed decision. At any point if you need

clarification on anything, we stand ready to come visit with you. If you feel we haven't given you adequate information on a topic, please feel free to contact me.

At some point in the next weeks, as the weather improves, if it would help any of you, either individually as a group or smaller groups, to visit some of our offices, visit with some of our staff members and see some of our activities on the ground, we would be more than happy to make that arrangement.

Governor Kempthorne. During this upcoming year I would like to see us get out and around a bit. Sometimes when you're out there on other business it's nice to walk into a Department of Lands office. They are always glad to see you.

Director Wiggins. It is always appreciated. We are proud of what we do on the ground so we are pleased to show it off.

- **Additional Discussion – Endowment Fund**

Controller Johnson stated since the Land Board last met, Board members have received a copy of the financial audit of the Endowment Fund Investment Board. The Land Board has not specifically addressed the audit and Controller Johnson suggested that the Land Board may want to do that. He also suggested it may be appropriate for the auditor to make a presentation to the Board.

Governor Kempthorne stated in light of the world of audits today it would be a good idea to have the auditor come before the Land Board. It may only be a 10-minute presentation, but it is a good procedure for the Board to begin. Governor Kempthorne also suggested that the Land Board include a meeting with the Endowment Fund Investment Board on either a quarterly or semi-annual basis. He feels the last joint meeting was very helpful, and he believes that the Endowment Fund Investment Board appreciated the discussion as well. Perhaps once Mr. Haertzen and the EFIB come up with their new game plan they can join the Land Board in one of its meetings. Director Wiggins stated he would discuss the suggestions proposed with Mr. Haertzen and would try to accommodate the Board's wishes as quickly as possible.

There being no further business to come before the board, the meeting adjourned at 10:40 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne

President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Ben Ysursa

Ben Ysursa
Secretary of State

/s/ Winston A Wiggins

Winston A Wiggins
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the February 11, 2003 regular Land Board meeting.